



General Assembly

January Session, 2009

Raised Bill No. 965

LCO No. 3623

03623_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING FALSE CLAIMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2009*) As used in this section and
2 section 2 of this act:

3 (1) "Claim" means any request or demand, whether under a contract
4 or otherwise, for money or property that is made to a contractor,
5 grantee or other recipient if the state provides any portion of the
6 money or property that is requested or demanded, or if the state will
7 reimburse such contractor, grantee or other recipient for any portion of
8 the money or property that is requested or demanded;

9 (2) "Knowing" and "knowingly" means that a person, with respect to
10 information: (A) Has actual knowledge of the information; (B) acts in
11 deliberate ignorance of the truth or falsity of the information; or (C)
12 acts in reckless disregard of the truth or falsity of the information,
13 without regard to whether the person intends to defraud;

14 (3) "Person" means any natural person, corporation, limited liability
15 company, firm, association, organization, partnership, business, trust

16 or other legal entity;

17 (4) "State" means the state of Connecticut, any agency or department
18 of the state or any quasi-public agency, as defined in section 1-120 of
19 the general statutes.

20 Sec. 2. (NEW) (*Effective July 1, 2009*) (a) No person shall:

21 (1) Knowingly present, or cause to be presented, to an officer or
22 employee of the state a false or fraudulent claim for payment or
23 approval;

24 (2) Knowingly make, use or cause to be made or used, a false record
25 or statement to secure the payment or approval by the state of a false
26 or fraudulent claim;

27 (3) Conspire to defraud the state by securing the allowance or
28 payment of a false or fraudulent claim;

29 (4) Having possession, custody or control of property or money
30 used, or to be used, by the state and intending to defraud the state or
31 wilfully to conceal the property, deliver or cause to be delivered less
32 property than the amount for which the person receives a certificate or
33 receipt;

34 (5) Being authorized to make or deliver a document certifying
35 receipt of property used, or to be used, by the state and intending to
36 defraud the state, make or deliver such document without completely
37 knowing that the information on the document is true;

38 (6) Knowingly buy, or receive as a pledge of an obligation or debt,
39 public property from an officer or employee of the state, who lawfully
40 may not sell or pledge the property; or

41 (7) Knowingly make, use or cause to be made or used, a false record
42 or statement to conceal, avoid or decrease an obligation to pay or
43 transmit money or property to the state.

44 (b) Any person who violates the provisions of subsection (a) of this
45 section shall be liable to the state for: (1) A civil penalty of not less than
46 five thousand dollars or more than ten thousand dollars, (2) three
47 times the amount of damages which the state sustains because of the
48 act of that person, and (3) the costs of investigation and prosecution of
49 such violation. Liability under this section shall be joint and several for
50 any violation of this section committed by two or more persons.

51 (c) Notwithstanding the provisions of subsection (b) of this section
52 concerning treble damages, if the court finds that: (1) A person
53 committing a violation of subsection (a) of this section furnished
54 officials of the state responsible for investigating false claims violations
55 with all information known to such person about the violation not later
56 than thirty days after the date on which the person first obtained the
57 information; (2) such person fully cooperated with an investigation by
58 the state of such violation; and (3) at the time such person furnished
59 the state with the information about the violation, no criminal
60 prosecution, civil action or administrative action had commenced
61 under sections 3 to 7, inclusive, of this act, with respect to such
62 violation, and such person did not have actual knowledge of the
63 existence of an investigation into such violation, the court may assess
64 not less than two times the amount of damages which the state
65 sustains because of the act of such person. Any information furnished
66 pursuant to this subsection shall be exempt from disclosure under
67 section 1-210 of the general statutes, as amended by this act.

68 Sec. 3. (NEW) (*Effective July 1, 2009*) The Attorney General may
69 investigate any violation of subsection (a) of section 2 of this act. Any
70 information obtained pursuant to this investigation shall be exempt
71 from disclosure under section 1-210 of the general statutes, as
72 amended by this act. If the Attorney General finds that a person has
73 violated or is violating any provision of subsection (a) of section 2 of
74 this act, the Attorney General may bring a civil action in the superior
75 court for the judicial district of Hartford under this section in the name
76 of the state against such person.

77 Sec. 4. (NEW) (*Effective July 1, 2009*) (a) A person may bring a civil
78 action in the superior court for the judicial district of Hartford against
79 any person who violates subsection (a) of section 2 of this act, for the
80 person who brings the action and for the state. Such civil action shall
81 be brought in the name of the state. The action may thereafter be
82 withdrawn only if the court and the Attorney General give written
83 consent to the withdrawing of such action and their reasons for
84 consenting.

85 (b) A copy of the complaint and written disclosure of substantially
86 all material evidence and information the person possesses shall be
87 served on the state by serving the Attorney General in the manner
88 prescribed in section 52-64 of the general statutes. The complaint shall
89 be filed in camera, shall remain under seal for at least sixty days and
90 shall not be served on the defendant until the court so orders. The
91 court, upon motion of the Attorney General, may, for good cause
92 shown, extend the time during which the complaint remains under
93 seal. Such motion may be supported by affidavits or other submissions
94 in camera. Prior to the expiration of the time during which the
95 complaint remains under seal, the Attorney General shall: (1) Proceed
96 with the action in which case the action shall be conducted by the
97 Attorney General, or (2) notify the court that the Attorney General
98 declines to take over the action in which case the person bringing the
99 action shall have the right to conduct the action.

100 (c) If the court orders that the complaint be unsealed and served, the
101 Superior Court shall issue an appropriate order of notice requiring the
102 same notice that is ordinarily required to commence a civil action. The
103 defendant shall not be required to respond to any complaint filed
104 under this section until thirty days after the complaint is served upon
105 the defendant.

106 (d) If a person brings an action under this section, no person other
107 than the state may intervene or bring a related action based on the facts
108 underlying the pending action.

109 Sec. 5. (NEW) (*Effective July 1, 2009*) (a) If the Attorney General,
110 pursuant to section 4 of this act, elects to proceed with the action, the
111 Attorney General shall have the primary responsibility for prosecuting
112 the action and shall not be bound by any act of the person bringing the
113 action. Such person shall have the right to continue as a party to the
114 action, subject to the limitations set forth in this section.

115 (b) The Attorney General may withdraw such action
116 notwithstanding the objections of the person bringing the action if the
117 Attorney General has notified the person of the filing of the motion
118 and the court has provided the person with an opportunity for a
119 hearing on the motion.

120 (c) The Attorney General may settle the action with the defendant
121 notwithstanding the objections of the person bringing the action if the
122 court determines, after a hearing, that the proposed settlement is fair,
123 adequate and reasonable under all the circumstances. Upon a showing
124 of good cause, such hearing may be held in camera.

125 (d) Upon a showing by (1) the Attorney General that unrestricted
126 participation during the course of the litigation by the person bringing
127 the action would (A) interfere with or unduly delay the Attorney
128 General's prosecution of the case, or (B) be repetitious, irrelevant or for
129 purposes of harassment; or (2) the defendant that unrestricted
130 participation during the course of the litigation by the person bringing
131 the action would be for purposes of harassment or would cause the
132 defendant undue burden or unnecessary expense, the court may, in its
133 discretion, impose limitations on the person's participation, including,
134 but not limited to, limiting the number of witnesses that such person
135 may call, limiting the length of the testimony of any such witnesses,
136 limiting the person's cross-examination of any such witnesses or
137 otherwise limiting the participation by the person in the litigation.

138 (e) If the court awards civil penalties or damages to the state or if the
139 Attorney General settles with the defendant and receives civil
140 penalties or damages, the person bringing such action shall receive

141 from the proceeds not less than fifteen per cent but not more than
 142 twenty-five per cent of such proceeds of the action or settlement of the
 143 claim, based upon the extent to which the person substantially
 144 contributed to the prosecution of the action. Any such person shall also
 145 receive an amount for reasonable expenses which the court finds to
 146 have been necessarily incurred, plus reasonable attorneys' fees and
 147 costs. All such expenses, fees and costs shall be awarded against the
 148 defendant.

149 (f) Notwithstanding the provisions of subsection (e) of this section,
 150 where the action is one that the court finds to be based primarily on
 151 disclosures of specific information relating to allegations or
 152 transactions (1) in a criminal, civil or administrative hearing, (2) in a
 153 report, hearing, audit or investigation conducted by the General
 154 Assembly, a committee of the General Assembly, the Auditors of
 155 Public Accounts, a state agency or a quasi-public agency, or (3) from
 156 the news media, the court may award from such proceeds to the
 157 person bringing the action such sums as it considers appropriate, but
 158 in no case more than ten per cent of the proceeds, taking into account
 159 the significance of the information and the role of the person bringing
 160 the action in advancing the case to litigation. Any such person shall
 161 also receive an amount for reasonable expenses that the court finds to
 162 have been necessarily incurred, plus reasonable attorneys' fees and
 163 costs. All such expenses, fees and costs shall be awarded against the
 164 defendant.

165 Sec. 6. (NEW) (*Effective July 1, 2009*) (a) If the Attorney General
 166 declines to proceed with the action, the person who brought the action
 167 shall have the right to conduct the action. In the event that the
 168 Attorney General declines to proceed with the action, upon the request
 169 of the Attorney General, the court shall order that copies of all
 170 pleadings filed in the action and copies of any deposition transcripts be
 171 provided to the state. When the person who brought the action
 172 proceeds with the action, the court, without limiting the status and
 173 rights of such person, may permit the Attorney General to intervene at

174 a later date upon a showing of good cause.

175 (b) A person bringing an action under this section or settling the
176 claim shall receive an amount which the court decides is reasonable for
177 collecting the civil penalty and damages. The amount shall be not less
178 than twenty-five per cent or more than thirty per cent of the proceeds
179 of the action or settlement and shall be paid out of such proceeds. Such
180 person shall also receive an amount for reasonable expenses that the
181 court finds to have been necessarily incurred, plus reasonable
182 attorneys' fees and costs. All such expenses, fees and costs shall be
183 awarded against the defendant.

184 (c) If a defendant prevails in the action conducted under this section
185 and the court finds that the claim of the person bringing the action was
186 clearly frivolous, clearly vexatious or brought primarily for purposes
187 of harassment, the court may award reasonable attorneys' fees and
188 expenses to the defendant.

189 (d) Irrespective of whether the Attorney General proceeds with the
190 action, upon request and showing by the Attorney General that certain
191 motions or requests for discovery by a person bringing the action
192 would interfere with the state's investigation or prosecution of a
193 criminal or civil matter arising out of the same facts, the court may stay
194 such discovery for a period of not more than sixty days from the date
195 of the order of the stay. Such a showing shall be conducted in camera.
196 The court may extend the stay for an additional sixty-day period upon
197 a further showing in camera that the state has pursued the criminal or
198 civil investigation or proceedings with reasonable diligence and any
199 proposed discovery in the civil action will interfere with the ongoing
200 criminal or civil investigation or proceedings. For the purposes of this
201 subsection, the Chief State's Attorney or state's attorney for the
202 appropriate judicial district may appear to explain to the court the
203 potential impact of such discovery on a pending criminal investigation
204 or prosecution.

205 Sec. 7. (NEW) (*Effective July 1, 2009*) Notwithstanding the provisions

206 of section 4 of this act, the Attorney General may elect to pursue the
207 state's claim through any alternate remedy available to the state,
208 including any administrative proceeding to determine a civil penalty.
209 If any such alternate remedy is pursued in another proceeding, the
210 person bringing the action shall have the same rights in such
211 proceeding as such person would have had if the action had continued
212 under the provisions of sections 4 to 6, inclusive, of this act. Any
213 finding of fact or conclusion of law made in such other proceeding that
214 has become final shall be conclusive on all parties to an action under
215 sections 4 to 6, inclusive, of this act. A finding or conclusion is final if it
216 has been finally determined on appeal to the appropriate court of the
217 state, if the time for filing such an appeal with respect to the finding or
218 conclusion has expired or if the finding or conclusion is not subject to
219 judicial review.

220 Sec. 8. (NEW) (*Effective July 1, 2009*) Notwithstanding the provisions
221 of sections 5 and 6 of this act, if the court finds that the action was
222 brought by a person who planned and initiated the violation of
223 subsection (a) of section 2 of this act, upon which violation an action
224 was brought, then the court may reduce the share of the proceeds of
225 the action that the person would otherwise receive under section 5 or 6
226 of this act, taking into account the role of that person in advancing the
227 case to litigation and any relevant circumstances pertaining to the
228 violation. If a person bringing the action is convicted of criminal
229 conduct arising from his or her role in the violation of subsection (a) of
230 section 2 of this act, such person shall be dismissed from the civil
231 action and shall not receive any share of the proceeds of the action.
232 Such dismissal shall not prejudice the right of the Attorney General to
233 continue the action.

234 Sec. 9. (NEW) (*Effective July 1, 2009*) (a) No court shall have
235 jurisdiction over an action brought under section 4 of this act (1)
236 against a member of the General Assembly, a member of the judiciary
237 or an elected officer or department head of the state if the action is
238 based on evidence or information known to the state when the action

239 was brought; (2) that is based upon allegations or transactions that are
240 the subject of a civil suit or an administrative civil penalty proceeding
241 in which the state is already a party; or (3) that is based upon the
242 public disclosure of allegations or transactions (A) in a criminal, civil
243 or administrative hearing, (B) in a report, hearing, audit or
244 investigation, conducted by the General Assembly, a committee of the
245 General Assembly, the Auditors of Public Accounts, a state agency or a
246 quasi-public agency, or (C) from the news media, unless such action is
247 brought by the Attorney General or the person bringing the action is
248 an original source of the information. For the purposes of this
249 subsection, "original source" means an individual who has direct and
250 independent knowledge of the information on which the allegations
251 are based and has voluntarily provided the information to the state
252 before filing an action under section 4 of this act based on such
253 information.

254 (b) No court shall have jurisdiction over an action brought under
255 section 4 of this act by a person who knew or had reason to know that
256 the Attorney General or another state law enforcement official knew of
257 the allegations or transactions prior to such person filing the action or
258 serving the disclosure of material evidence.

259 Sec. 10. (NEW) (*Effective July 1, 2009*) The state of Connecticut shall
260 not be liable for expenses which a person incurs in bringing an action
261 under sections 4 to 7, inclusive, of this act.

262 Sec. 11. (NEW) (*Effective July 1, 2009*) Any employee who is
263 discharged, demoted, suspended, threatened, harassed or in any other
264 manner discriminated against in the terms and conditions of
265 employment by his or her employer because of lawful acts done by the
266 employee on behalf of the employee or others in furtherance of an
267 action under sections 3 to 7, inclusive, of this act, including
268 investigation for, initiation of, testimony for or assistance in an action
269 filed or to be filed under sections 3 to 7, inclusive, of this act, shall be
270 entitled to all relief necessary to make the employee whole. Such relief

271 shall include reinstatement with the same seniority status such
272 employee would have had but for the discrimination, two times the
273 amount of any back pay, interest on any back pay and compensation
274 for any special damages sustained as a result of the discrimination,
275 including litigation costs and reasonable attorneys' fees. An employee
276 may bring an action in the Superior Court for the relief provided in
277 this section.

278 Sec. 12. (NEW) (*Effective July 1, 2009*) A civil action under sections 3
279 to 7, inclusive, of this act may not be brought: (1) More than six years
280 after the date on which the violation of subsection (a) of section 2 of
281 this act is committed, or (2) more than three years after the date when
282 facts material to the right of action are known or reasonably should
283 have been known by the official of the state charged with
284 responsibility to act in the circumstances, but in no event more than
285 ten years after the date on which the violation is committed, whichever
286 last occurs.

287 Sec. 13. (NEW) (*Effective July 1, 2009*) In any action brought under
288 sections 3 to 7, inclusive, of this act, the Attorney General or the person
289 initiating such action shall be required to prove all essential elements
290 of the cause of action, including damages, by a preponderance of the
291 evidence.

292 Sec. 14. (NEW) (*Effective July 1, 2009*) Notwithstanding any other
293 provision of law, a final judgment rendered in favor of the state
294 against a defendant in any criminal proceeding charging fraud or false
295 statements, whether upon a verdict after trial or upon a plea of guilty
296 or nolo contendere, shall estop such defendant from denying the
297 essential elements of the offense in any action which involves the same
298 transaction as in the criminal proceeding and which is brought in
299 accordance with the provisions of sections 3 to 7, inclusive, of this act.

300 Sec. 15. (NEW) (*Effective July 1, 2009*) The provisions of sections 1 to
301 14, inclusive, of this act are not exclusive, and the remedies provided
302 for shall be in addition to any other remedies provided for in any other

303 provision of the general statutes or federal law or available under
304 common law.

305 Sec. 16. Subsection (a) of section 4-61dd of the general statutes is
306 repealed and the following is substituted in lieu thereof (*Effective July*
307 *1, 2009*):

308 (a) Any person having knowledge of any matter involving
309 corruption, unethical practices, violation of state laws or regulations,
310 mismanagement, gross waste of funds, abuse of authority or danger to
311 the public safety occurring in any state department or agency or any
312 quasi-public agency, as defined in section 1-120, or any person having
313 knowledge of any matter involving corruption, violation of state or
314 federal laws or regulations, gross waste of funds, abuse of authority or
315 danger to the public safety occurring in any large state contract, may
316 transmit all facts and information in such person's possession
317 concerning such matter to the Auditors of Public Accounts. The
318 Auditors of Public Accounts shall review such matter and report their
319 findings and any recommendations to the Attorney General. Upon
320 receiving such a report, the Attorney General shall make such
321 investigation as the Attorney General deems proper regarding such
322 report and any other information that may be reasonably derived from
323 such report. Prior to conducting an investigation of any information
324 that may be reasonably derived from such report, the Attorney
325 General shall consult with the Auditors of Public Accounts concerning
326 the relationship of such additional information to the report that has
327 been issued pursuant to this subsection. Any such subsequent
328 investigation deemed appropriate by the Attorney General shall only
329 be conducted with the concurrence and assistance of the Auditors of
330 Public Accounts. At the request of the Attorney General or on their
331 own initiative, the auditors shall assist in the investigation. The
332 Attorney General shall have power to summon witnesses, require the
333 production of any necessary books, papers or other documents and
334 administer oaths to witnesses, where necessary, for the purpose of an
335 investigation pursuant to this section or for the purpose of

336 investigating a suspected violation of subsection (a) of section 2 of this
 337 act until such time as the Attorney General files a civil action pursuant
 338 to section 3 of this act or proceeds with a civil action pursuant to
 339 section 4 of this act. Upon the conclusion of the investigation, the
 340 Attorney General shall where necessary, report any findings to the
 341 Governor, or in matters involving criminal activity, to the Chief State's
 342 Attorney. In addition to the exempt records provision of section 1-210,
 343 the Auditors of Public Accounts and the Attorney General shall not,
 344 after receipt of any information from a person under the provisions of
 345 this section or sections 3 to 7, inclusive, of this act, disclose the identity
 346 of such person without such person's consent unless the Auditors of
 347 Public Accounts or the Attorney General determines that such
 348 disclosure is unavoidable, and may withhold records of such
 349 investigation, during the pendency of the investigation.

350 Sec. 17. Subdivision (13) of subsection (b) of section 1-210 of the
 351 general statutes is repealed and the following is substituted in lieu
 352 thereof (*Effective July 1, 2009*):

353 (13) Records of an investigation or the name of an employee
 354 providing information under the provisions of section 4-61dd, as
 355 amended by this act, or sections 3 to 7, inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	New section
Sec. 2	<i>July 1, 2009</i>	New section
Sec. 3	<i>July 1, 2009</i>	New section
Sec. 4	<i>July 1, 2009</i>	New section
Sec. 5	<i>July 1, 2009</i>	New section
Sec. 6	<i>July 1, 2009</i>	New section
Sec. 7	<i>July 1, 2009</i>	New section
Sec. 8	<i>July 1, 2009</i>	New section
Sec. 9	<i>July 1, 2009</i>	New section
Sec. 10	<i>July 1, 2009</i>	New section
Sec. 11	<i>July 1, 2009</i>	New section

Sec. 12	<i>July 1, 2009</i>	New section
Sec. 13	<i>July 1, 2009</i>	New section
Sec. 14	<i>July 1, 2009</i>	New section
Sec. 15	<i>July 1, 2009</i>	New section
Sec. 16	<i>July 1, 2009</i>	4-61dd(a)
Sec. 17	<i>July 1, 2009</i>	1-210(b)(13)

Statement of Purpose:

To establish a right of action by the state or a private individual for the recovery of treble damages against any person who knowingly presents a false or fraudulent claim to the state and, if the action is brought by a private individual, to authorize payment of a percentage of the damages recovered to such individual.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]